

# A guide to *Maternity Benefits*

Statutory Maternity Pay and Maternity Allowance





## About this

## leaflet

This is one of several guides that give detailed information about Social Security benefits. It is intended for both professional and voluntary advisers and for members of the public who want to know more about maternity benefits. Full details of all these guides can be found on page 53.

For information about Social Security benefits in general see leaflet FB 2 *Which benefit?* You can get it from Social Security offices, or by writing to the address on page 52.

### This leaflet and the law

This leaflet is only a guide to maternity benefits, it has no status in law. It does not cover all the rules in the maternity benefits scheme for every situation, nor does it provide a full interpretation of the rules. So it should not be treated as a complete and authoritative statement of the law.

The basis of the law for maternity benefits is the Social Security Contributions and Benefits Act 1992. The Act provides the framework for the detailed rules contained in Regulations made by the Secretary of State and approved by Parliament. Page 54 lists all the relevant legal documents and tells you where you can consult them.

Throughout the text there are references to the relevant Regulation or Schedule, to allow you to consult the legal wording of the rules.

### Great Britain and the United Kingdom

The information contained in this leaflet is primarily concerned with the law in **Great Britain**, that is, England, Scotland, and Wales. Northern Ireland is covered by the Social Security (Northern Ireland) Order 1986 and the arrangements are basically the same. Information on Northern Ireland can be obtained from Social Security offices in the province.

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## Introduction

## to maternity

## benefits

There are two principal kinds of maternity benefit available to women under the Social Security scheme:

**Statutory Maternity Pay** from your employer  
and **Maternity Allowance** from the DSS. You can't get both at the same time.

**Statutory Maternity Pay (SMP)** is a weekly payment that you may be able to get from your employer. The amount of SMP you get will depend on how long you have been working for your employer, and on how much you earn. SMP can be paid for up to 18 weeks. For full details of SMP, turn to page 6.

If you can't get SMP, you may be able to get up to 18 weeks **Maternity Allowance (MA)** from your Social Security office. For full details, turn to page 34.

If you are not entitled to get either SMP or MA, you may be able to get some **Sickness Benefit** instead. If you are on Income Support, Family Credit or Disability Working Allowance, you may be able to get a Maternity Payment from the **Social Fund**. Details of this are available in leaflet FB 8 *Babies and benefits*.

## Terms used in this guide

### Confinement

Labour resulting in a live birth, or labour after at least 24 weeks of pregnancy – see **Stillbirths**, page 27.

### Core period

The 13-week period starting at the beginning of the 6th week before the week in which your baby is due.

### DSS

Department of Social Security.

### European Community

Member countries are: Belgium, Denmark, Germany, France, Greece, Republic of Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom and for Social Security matters, Gibraltar.

### EWC

Expected week of confinement – the week in which your baby is due.



**MA**

Maternity Allowance.

**MAP**

Maternity Allowance period – the period (up to 18 weeks) in which you can be paid Maternity Allowance.

**MA test period**

The period of 52 weeks ending with the 15th week before the week in which your baby is due.

**Maternity certificate (MAT B1)**

Certificate issued by a doctor or midwife showing the date on which your baby is due.

**MPP**

Maternity pay period – the period (up to 18 weeks) in which you can be paid Statutory Maternity Pay.

**NI**

National Insurance.

**Qualifying week**

The 15th week before the beginning of the week in which your baby is due.

**SMP**

Statutory Maternity Pay.

**Social Security office**

Your local DSS office.

**United Kingdom (UK)**

England, Wales, Scotland and Northern Ireland. The Channel Islands and the Isle of Man are not part of the UK.

**Week**

Period of seven days that begins at midnight between Saturday and Sunday.

**Year**

Period of 12 months, such as from 5 August 1991 to 4 August 1992.

***More information***

For general information and instructions on how to claim maternity benefits get leaflet FB 8 *Babies and benefits* from your Social Security office.



# Statutory

## Maternity

### Pay (SMP)

Social Security  
Contributions and  
Benefits Act 1992  
Part XII Schedule 13

The Statutory  
Maternity Pay  
(General)  
Regulations 1986  
(SI 1986 No 1960)

## Introduction

**Statutory Maternity Pay is a weekly payment made by employers to employees or former employees.**

Employers pay SMP to those women who have been with them for at least 26 weeks at about the time of giving up work to have their babies. It does not matter whether the women intend to return to work afterwards. SMP can be paid for a maximum of 18 weeks.

The amount of SMP you get depends on how long you have been working for your employer, and on how much you earn.

So if you were not employed in your pregnancy you can't get SMP. But you may be able to get **Maternity Allowance** from your Social Security office. (Turn to page 34 for full details.)

If you think you may be entitled to SMP, please read the following pages very carefully. Page 4 should help you if you forget the meanings of any of the abbreviations or technical phrases.

**Before you read on, it may help if you work out the date of the start of your qualifying week. This is a very important date.**

**The qualifying week** is the week 15 weeks before the beginning of the week in which your baby is due.

The definition of a week in this guide is a period of seven days that begins at midnight between Saturday and Sunday.

## Who can get SMP?

To qualify for SMP, you have to satisfy two basic rules:

the **continuous employment rule**  
and the **earnings rule**.

The **continuous employment rule** states that:

you must have been employed by the same employer for at least 26 weeks including (and ending with) the



qualifying week, which is 15 weeks before the week in which your baby is due. For more details see page 8.

**The earnings rule** states that:

on average, you must earn enough to pay Class 1 National Insurance (NI) contributions. For more details, see below.

If you satisfy both these rules, you are usually entitled to SMP from your employer.

**Note:** the week in which your baby is due is sometimes referred to as the EWC – expected week of confinement.

### Who is your employer?

Your employer is someone who is liable to pay the employer's share of your Class 1 NI contributions (or would do if you earned enough). You don't have to have a written contract of service. And your employer doesn't actually have to have paid any NI contributions for you.

A few employers don't have to pay SMP (see **Who can't get SMP** on page 13).

If you have more than one employer (or more than one contract with the same employer), you may be entitled to more than one lot of SMP (see **More than one employer** on pages 16 and 18).

### The earnings rule

To qualify for SMP, you must satisfy the earnings rule. Your average earnings (including bonuses and overtime) must be at or above the lower earnings limit (the level at which you start to pay National Insurance contributions). It makes no difference if you pay NI contributions at the reduced rate that some married women and widows pay.

The lower earnings limit is reviewed regularly, usually in April. If it changes while you are pregnant, remember that the lower earnings limit that applies to you will normally be the one that was current in the qualifying week. You will find the current rate in leaflet NI 196 *Social Security benefit rates*. For SMP purposes, your average earnings are usually your average weekly earnings over a period



of eight weeks ending with your last pay day before the end of the qualifying week (see diagram on page 24). You can find out more about how your average earnings are calculated on page 22.

### The continuous employment rule

To qualify for SMP, you must satisfy the continuous employment rule. You must have been employed by your employer for a continuous period of at least 26 weeks. And this period must include at least one day in the **qualifying week** (which is the 15th week before the week in which the baby is due).

Although continuous employment usually means employment by the same employer without a break, there are some circumstances when breaks in employment can be disregarded (see below).

If you have been employed by your employer full-time (at least 16 hours a week) for a continuous period of 2 years into the qualifying week, you may be entitled to some SMP at a higher rate. You may also qualify for the higher rate if you have been employed by your employer part-time (normally between 8 and 16 hours a week) for a continuous period of at least five years into the qualifying week. (You can find out more about higher rate SMP in **How much?** on page 20.)

The employment rule may be modified slightly if you have been fairly dismissed because of your pregnancy (see page 11), or if your baby is born prematurely, before the qualifying week (see **Premature births** on page 26).

### When broken employment can be taken as continuous

Continuous employment usually means employment by the same employer without a break, but it does not always mean this. There are circumstances when a change of employer can be disregarded (see page 11). And under some circumstances, your employment can be treated as continuous, in spite of some breaks. For SMP purposes, your employment can be taken as continuous if any one of the following applies:



you are absent (for periods of less than 26 consecutive weeks) because of sickness, injury, pregnancy or confinement

- or** after at least two years continuous employment, you take maternity leave and then exercise your statutory right to return to work within 29 weeks of the baby's birth (in which case, all the weeks between the date you were first absent and the date you returned to work count towards your period of continuous employment)
- or** your work has temporarily ceased because your employer was unable to offer you any work
- or** you are away in circumstances in which, by arrangement or custom, your employment is regarded as continuing for some purposes (for example, if you are a teacher employed on term-by-term contracts with the same or associated employers)
- or** you were unfairly dismissed and, after action under the Employment Protection (Consolidation) Act, were reinstated (or would have been, but for your pregnancy) and have refunded any redundancy or equivalent payment you received from your employer when you were dismissed
- or** you are away because of a stoppage of work during an industrial dispute (the weeks you are away do not themselves count towards your period of continuous employment unless you can show that you had no direct interest in the dispute)
- or** after a spell in the Armed Forces, you return to your previous employer under the Reserve Forces (Safeguard of Employment) legislation within six months. In this case your previous period with your employer can be treated as continuous together with your present one, but not the period of the break.

### **If you are employed by an agency**

If you are employed by an agency, in each of the 26 weeks into the qualifying week, you will satisfy the continuous employment rule.



As long as you did some work during any week it counts as a **full week**.

There may be complete weeks when you did no work for the agency. This does not necessarily mean that your continuity of employment is broken.

### **Deciding the continuous employment question**

If the agency was unable to offer you work in any particular week, continuity is not broken.

If the agency did offer work, but you were not available, the period of absence can count only if you were unable to work because of sickness, injury or pregnancy.

### **Employment in the qualifying week (QW)**

If you were not employed in the QW, you can still be treated as employed in that week if:–

- the agency had no work for you in that week, **and**
- you were not intending to start your maternity absence at that time, and remained available for work after the QW as soon as the agency had something for you, **and**
- you did in fact have further employment with the agency before starting your maternity absence.

If you had intended to go on working but stopped before the QW because of sickness, you can be regarded as working into the QW. **You must actually resume work with the agency within 26 weeks of stopping** before this can apply.

**If you have stopped looking for work through a particular agency before the start of the QW, you cannot be entitled to SMP from that agency.** But you may be entitled to claim Maternity Allowance from your Social Security office (see page 34).

### **If you stop work before the qualifying week**

You will not normally qualify for SMP if you cease employment before the qualifying week. This is the 15th



week before the week in which your baby is due. There are two exceptions to this:

if you are fairly dismissed because of your pregnancy before the qualifying week (see **Fair dismissal** below)

**and** if your baby is born prematurely, before the qualifying week (see **Premature births** on page 26).

In these cases you are taken as satisfying the continuous employment rule (see page 8) if you would have done so but for your dismissal or early confinement.

### Fair dismissal

Dismissal because of your pregnancy may in some circumstances be considered to be 'fair'. If your condition makes it impossible for you to do your job properly, or if it would be dangerous or even illegal for you to carry on with your job while pregnant, your employer should offer you a suitable alternative job. But if you decide not to accept such a job, you may be fairly dismissed.

You should discuss the situation with your employer. If you are in any doubt about whether or not your dismissal is 'fair' for SMP purposes, consult your Social Security office.

If you are fairly dismissed before the qualifying week, you may still be entitled to SMP. You won't, of course, have to give your employer notice of when you intend to stop work to have your baby. But, before you can be paid any SMP, you will have to provide your employer with medical evidence of the date on which your baby is due (see page 15).

### Change of employer

If you change jobs during your pregnancy, you are unlikely to be able to meet the continuous employment rule (see page 8). But there are circumstances when your employment can be treated as continuous, even if your employer changes. For SMP purposes, your employment is treated as continuous if any of the following applies:



your employer's trade, business, or undertaking is transferred to another employer

- or** by or under an Act of Parliament, one corporate body takes over from another as your employer
- or** your employer dies, and his or her personal representatives or trustees keep you on in employment
- or** there is a change in the partners, personal representative or trustees who employ you
- or** you move from one employer to another at a time when the two employers are associated employers, that is if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control
- or** you are a teacher in a school maintained by a local education authority, and you move to another school maintained by the same authority (including maintained schools where the governors of that school, rather than the local Education Authority is your employer).

**More information** is available in the Department of Employment's leaflet PL 699 *Employment rights on the transfer of an undertaking*, which you can get from Jobcentres and Unemployment Benefit offices.

#### **If your contract ends**

If you satisfy both the continuous employment rule (see page 8) and the earnings rule (see page 7), your employer must pay you SMP even if your contract ends either at the start of your maternity absence or at some time during the maternity pay period (MPP).

#### **If you are taken into custody**

If you are taken into legal custody at any time in your MPP, your employer no longer has to pay you SMP. Legal custody means detained by the police, usually arrested and/or in prison. Your entitlement to SMP is not affected if you voluntarily help the police with their enquiries.



The Statutory  
Maternity Pay  
(Persons Abroad  
& Mariners)  
Regulations 1987  
(SI 1987 No 418)

When you are discharged from custody, you still won't be able to get SMP. But you may be able to get **Maternity Allowance** from your Social Security office (see page 34).

**If you go abroad**

You can't get SMP if you are outside the European Community at any time in the first week of your MPP unless you are a mariner or continental shelf worker (see page 28).

If you are already getting SMP and you go outside the European Community, SMP will stop immediately and will not resume when you come back.

In either situation, you may be able to get **Maternity Allowance** (see page 34).

You are not regarded as outside the European Community while you are in transit between member countries. There is a list of member countries on page 4.

## ***Who can't get SMP?***

The following are all reasons why you might not be able to get SMP:

- you do not have an employer (see page 7)
- or** you are exclusively self-employed
- or** you were not employed in the qualifying week (see page 8) and cannot be treated as employed (see page 6), for example because you had previously either already had the baby (see page 26) or been fairly dismissed (see page 11)
- or** you do not satisfy the continuous employment rule (see page 8)
- or** you do not satisfy the earnings rule (see page 7)
- or** you failed to give your employer due notice of the start of your maternity absence (see page 15)
- or** you did not provide medical evidence of your expected week of confinement (and of the confinement itself if this was earlier than expected) within the time allowed (see page 15)



- or your baby is stillborn before the 25th (29th) week of pregnancy (see page 27)
- or your employer has no place of business in the UK
- or you are employed by an employer in the UK against whom the NI scheme is not enforceable (for example, you work in an embassy or consulate)
- or you are a foreign-going manager or a deep sea fisher
- or you are not normally resident in the European Community so your employer is not liable to pay NI contributions on your behalf.

There is a full list of members of the European Community on page 4.

## *Who stops getting SMP?*

You cannot continue to get SMP if:

- after** the baby is born, you start work in the MPP for an employer other than any employer you had in the qualifying week
- or you go abroad outside the European Community at any time during the MPP (see page 13)
- or you are taken into legal custody at any time during the MPP.

If you can't get SMP or your SMP is stopped for any of the above reasons, you may be able to get **Maternity Allowance** from your Social Security office. Turn to page 34 for more information.

## *How to get SMP*

If you are pregnant and you think you are eligible for SMP from your employer, you must tell your employer that you intend to stop work to have the baby. You must also provide your employer with evidence of when your baby is due.



**The Statutory  
Maternity Pay  
(Medical Evidence)  
Regulations 1987  
(SI 1987 No 235)**

**Telling your employer**

You should give your employer at least 21 days notice of the date you intend to stop work to have your baby. Your employer may need your notice in writing.

If it is not possible to give 21 days notice, you must tell your employer as soon as you can. If your employer considers it was reasonably practicable for you to have given notice earlier than you did, your employer can refuse to pay you SMP.

If your baby is born prematurely, before you had given notice to your employer, you may still be able to get SMP (see **Premature births** on page 26).

**Proving your baby is due**

You must give your employer medical evidence of the date your baby is due. This will normally be on a maternity certificate (MAT B1) that you can get from your doctor or midwife. You can't get this certificate until you reach the 14th week before the week in which your baby is due (from the Sunday of your 27th week of pregnancy).

Your employer may be willing to accept other medical evidence, but this must be broadly the same as a maternity certificate. It must be in writing, it must identify you, it must be issued by your doctor or midwife no more than 14 weeks before the baby is due, and it must either be stamped with your doctor's name and address, or show your midwife's name and the midwife's personal identity number.

You should normally give your employer the medical evidence no later than 3 weeks after the date SMP was due to start (see **Maternity pay period** on page 16). Your employer may agree to accept your medical evidence later than this if he or she is satisfied that you had a good reason for the delay. But if you have not provided the evidence within 13 weeks of the start of the MPP, for whatever reason, SMP is not payable.

Even if your baby is born prematurely, before the maternity certificate could be issued, your employer will



still need evidence of the date the baby was actually due. Please read the section about **Premature births** on page 26.

### More than one employer

If you have more than one employer, you may be entitled to SMP from each one (so you could get more than one lot of SMP). The same is true if you have more than one contract with the same employer, if your NI contributions are paid separately for each contract.

Remember that your doctor or midwife will normally issue you with only one maternity certificate (form MAT B1). So if you do qualify for SMP from more than one employer, your other employer will have to tell you what other medical evidence is acceptable (see **Proving your baby is due** on page 15).

## When SMP is paid

You can't get any SMP until the 11th week before the week your baby is due. But there is usually some flexibility as to exactly when the payments start, depending on when you stop work to have the baby.

### Maternity pay period

SMP can be paid for up to 18 weeks. This is called the **maternity pay period** or MPP (see diagram on page 17). You can get SMP from the beginning of the 11th week before the week in which your baby is due. But only if you stop work before then. Your employer can't pay you SMP for any week\* in which you do work for him or her.

**\*Note:** for SMP purposes, a week begins at midnight between Saturday and Sunday.

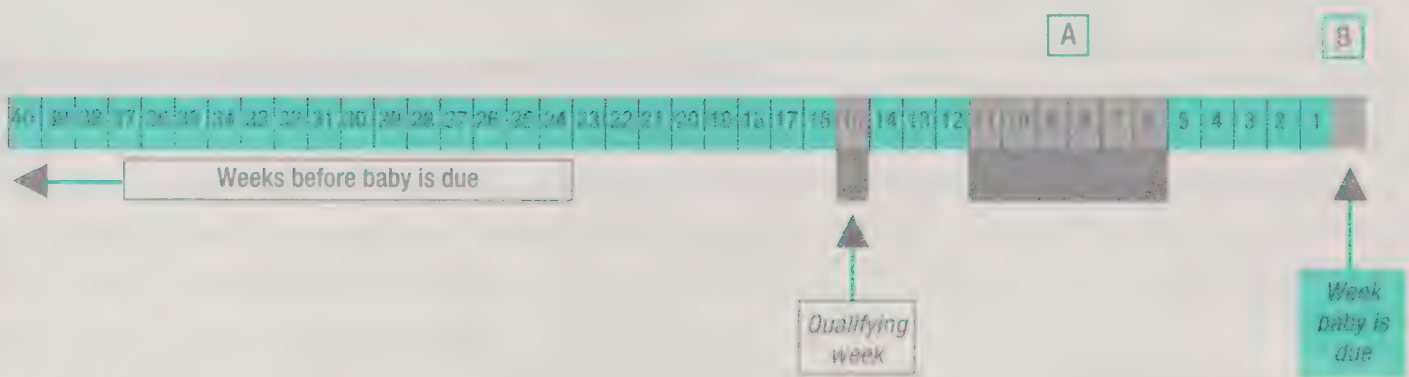
As long as your condition doesn't prevent you from doing your job properly (see **Fair dismissal** on page 11), it is up to you to decide whether to stop work or to work on. If you do work on beyond the 12th week before the week in which your baby is due, your MPP will usually begin the week after the week in which you last work.



## Statutory Maternity Pay (SMP)

As long as you stop work before the start of the 6th week before the week in which the baby is due, you can get payment for the full 18 weeks. But if you work later into your pregnancy you will lose payment for each **week** in which you do any work.

To get SMP, you must be employed during the qualifying week. If your baby is born (or you are dismissed) before the qualifying week, please read page 26 (or page 10).



*Diagram showing the qualifying week and the maternity pay period.*

**A** Your maternity pay period (see page 16) must start at the beginning of one of these weeks.

**B** The maternity pay period can last up to 18 weeks from the week it starts.

### Stopping work early

You can, in fact, stop work long before your baby is due. As long as you are **employed** (not necessarily working) in the qualifying week and satisfy the earnings rule, you may be entitled to SMP. But note that stopping work earlier may affect your right to return to work afterwards (see page 32).

The start of your maternity pay period (MPP) will depend on whether your absence from work is due to your pregnancy. If you are already away from work for some other reason, your MPP should start in accordance with



the date you originally gave for the beginning of your maternity absence. (If your baby is born before this date see **Premature births** on page 26.)

### Baby born late

If your baby is born later than the week in which it was due, your SMP is not affected. Your MPP remains the same. However, if you are incapable of work when the MPP ends, you may be able to get Statutory Sick Pay from your employer (see page 28) or Sickness Benefit from your Social Security office (see page 29).

### Industrial disputes

Industrial or trade disputes have no effect on the start of the maternity pay period. If you are involved in such a dispute, you can still give your employer notice of the date your maternity absence will start. This date can be within the period of the dispute. And the notice that you have already given to your employer is not affected by a subsequent trade dispute.

### More than one employer

If you have more than one employer, you may be entitled to more than one lot of SMP (see page 20). Although you may want to stop work in each job at the same time, you can still go on longer with one of them if you feel you can do so. Your SMP with each employer would then start at different times.

You may also be entitled to more than one lot of SMP if you are entitled to SMP under separate contracts with the same employer. But in this instance you must stop working under each contract before you can receive the SMP under separate contracts.

### National Health Service Employees

If you work for a Health Authority at more than one hospital or unit and one (or more) of those hospitals or units become an NHS Trust then you will have two or more contracts of employment.

This may mean that you will get more than one lot of SMP (see page 20). It may also mean that because your

earnings have been split between contracts, your average earnings under one or more of those contracts are below the lower earnings limit (see page 7) and you will not qualify for SMP.

There are special rules for this situation. If you were employed by a Health Authority when your contract was split between a Health Authority and a Trust or between Trusts, you can elect to have your contracts treated as one for SMP purposes if it would be helpful to you.

**Example A** – A woman earning £100 each week had her contract of employment split equally between a Health Authority and a NHS Trust. She then earned £50 per week under each contract. After the split, because her earnings under each contract were below the lower earnings limit, she did not qualify for SMP. She can therefore elect to have her contracts treated as one to enable her to qualify for SMP.

**Example B** – This example shows what could happen when a woman has worked long enough to get higher rate SMP for the first six weeks of maternity absence (see page 21). Before her contract split a woman earned £150 each week and qualified for higher rate SMP of £135 per week (90% of £150). After the split she earned £100 under one contract and £50 under the other. Higher rate SMP of £90 (90% of £100) would be payable on the bigger contract and no SMP would be payable under the other. Electing to have her contracts treated as one would mean that she would get 90% of £150 again.

If you want to elect to have your contracts treated as one, you should tell each of your employers about your election at least 21 days before the date you intend to stop work to have the baby.

Within 21 days of telling your employers about your election you should give each of your employers the following information:

- the name and address of each employer
- the date you started working for each employer



- details of your earnings from each employer for the eight weeks up to and including the qualifying week (see page 22 for how average weekly earnings are worked out).

If you cannot provide this information within the 21-day time limit above, you must do so as soon as you can.

## How much?

The amount of SMP you get depends on how long you have worked for your employer, and on how much you earn. (Remember, you must satisfy the earnings rule, or you will not qualify for SMP at all, see page 7.)

If, before the qualifying week, you were fairly dismissed (see page 11) or your baby was born (see page 26), the amount you get depends on whether you can still be treated as satisfying the qualifying conditions (see page 6).

There are two rates of SMP. Most weeks of SMP are paid at the **lower rate**. But if you have been continuously employed by your present employer for at least two years full-time or five years part-time some of your SMP will be at a **higher rate**.

### Lower rate SMP

If, when you reach the qualifying week (see page 17), you have been employed continuously by the same employer for at least 26 weeks, but less than 2 years full-time or less than 5 years part-time, you will be entitled to SMP for up to 18 weeks at the lower rate.

**Full-time** means that you normally work for your employer for at least 16 hours a week.

**Part-time** means that you normally work for your employer for at least 8 and less than 16 hours a week. (For more details, see **Qualifying for the higher rate** on page 21.)

The lower rate is prescribed by Government order and is given in leaflet NI 196 *Social Security benefit rates* enclosed with this guide. The rate is reviewed in April each year.

### Higher rate SMP

If, when you reach the qualifying week, you have been employed continuously by the same employer for at least 2 years full-time or 5 years part-time, you will be entitled to SMP at a higher rate for the first 6 weeks.

This will be followed by payments at the lower rate for up to 12 weeks more.

The higher rate payments are 90 per cent of your average weekly earnings (see page 22) and will never be less than the lower rate.

### Working in late pregnancy

If you carry on working for your employer into or beyond the 6th week before the week in which your baby is due you will receive less than 18 weeks of SMP (see page 20). But the first 6 weeks of SMP will be paid at the higher rate if you are entitled to this.

Your SMP is not affected **before** your baby is born if, during your maternity absence, you work for an employer other than your normal employer.

### Deductions from SMP

SMP is treated as earnings. So your employer will make any deductions (such as income tax and NI contributions) that are due. Your employer can also deduct pension contributions or trade union subscriptions from SMP.

### Qualifying for the higher rate

The length of continuous employment required for the higher rate SMP depends on your normal hours of work. You qualify for the higher rate if any one of the following applies to you:

- in the 2-year period ending in the qualifying week, you were contracted to work for at least 16 hours a week. It doesn't matter how many hours you actually worked
- or in the 2-year period ending in the qualifying week, you actually worked for at least 16 hours a week for more than half the weeks – regardless of what your contract says



- or in the 2-year period ending in the qualifying week, you worked no more than 26 weeks under a contract involving at least 8 but less than 16 hours a week, and you worked all the remaining weeks under a contract involving at least 16 hours a week
- or during the course of an employment that continued into the qualifying week, you worked for a period of 2 years under a contract of service involving at least 16 hours a week, and followed this by a contract involving at least 8 hours a week
- or you were employed for a continuous period of at least five years running into the qualifying week, and more than half the weeks were under a contract of service involving at least eight hours a week
- or by the qualifying week, you had two years of continuous employment, but there were no contractual hours – regardless of the hours worked. (For example, if you are a local authority councillor, you are an employee by virtue of paying NI contributions on the allowance and/or special responsibilities payments for attendance during the period in which you were elected to hold office. There is, however, no contract, and no contractual hours. As long as you hold office for two years ending in the qualifying week, you qualify for the higher rate.)

#### **Working out your average weekly earnings**

Your employer must work out your average weekly earnings to find out whether or not you qualify for SMP and, if so, at what rate. As a general rule, your earnings will be averaged over the period of eight weeks up to and including the last pay day before the end of the qualifying week. But the calculation may differ from this, depending on your pay period.

For SMP purposes, 'pay' means gross pay that is due before any deductions. The gross pay you get from your employer in the relevant eight-week period will be taken into account, as long as it counts for NI contributions. Sick pay, overtime, bonus payments, retrospective pay awards and even, in most circumstances, holiday pay must all be

included if you actually receive them at this time. It is when the money is received that counts, **not** when it was earned.

**If you are paid weekly**, your employer will add together all your gross weekly earnings in the eight weeks up to and including the last pay day before the end of your qualifying week. The total will then be divided by eight to give your average weekly earnings.

**If you are paid monthly**, all the pay you get in the two months up to and including the last normal pay day before the end of the qualifying week will count.

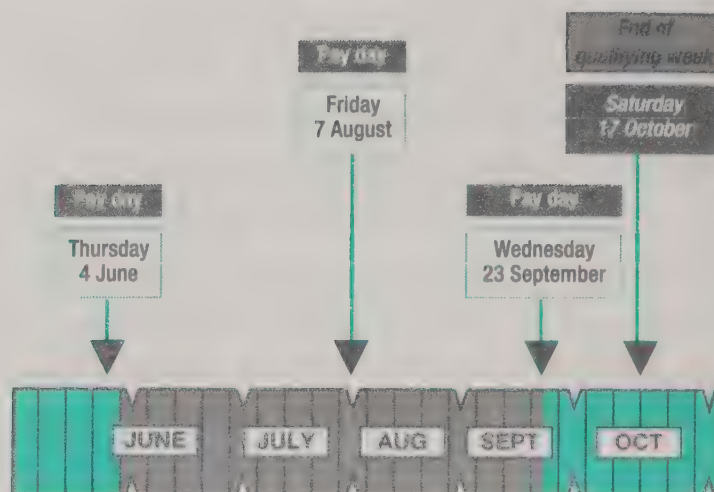
If you are paid once each calendar month, for example on the last working day of the month or on the same date each month, your employer will add together all the pay you received in these two months, then multiply by six and divide by 52 to give your average weekly earnings.

If you are paid monthly but are paid in multiples of a week (for example, on the last Friday of each month), your employer will add together all the pay you received in these two months and divide the total by the number of weeks covered by the payments to give your average weekly earnings.

**If you are paid at other intervals**, your employer must add together your pay on your last normal pay day before the end of the qualifying week and any other pay received since (but not including) the last pay day to fall at least eight weeks before that one. Your pay for this period is then averaged out, any odd days being counted as one-seventh of a week each.

For example, if your qualifying week ends on Saturday 17 October 1992, you were paid on 23 September 1992, 7 August 1992 and 4 June 1992. The payments made on 23 September 1992 and 7 August 1992 are added together. The period over which these earnings should be averaged is 5 June 1992 to 23 September 1992 inclusive, which is  $15\frac{6}{7}$  weeks. See the diagram below.





*Diagram showing how to work out your average weekly earnings.*

If you are in any doubt, get your employer to show you how your average weekly earnings have been worked out.

**If you have been fairly dismissed** (see page 11) before the qualifying week, the earnings will be averaged over the eight weeks ending with the last week you worked for your employer.

**If your baby is born prematurely** (see page 26) before the end of the qualifying week, the relevant period for working out your average earnings will usually be the eight weeks ending with the last complete week before the week in which your baby is born.

## ***How SMP is paid***

It is intended that SMP should be paid in the same way and at the same time as your normal wages would be paid. Although it is a weekly rate your employer does not have to pay you weekly. If your wage is normally paid monthly, your employer can pay you SMP monthly with an adjusting payment for any odd weeks.

Your SMP can be paid to you through an insurance company, friendly society, payroll service or other third party if you wish, but your employer must make sure that all the necessary income tax and NI deductions are made.

Your employer cannot pay you SMP in kind, or as board and lodging, or by way of a service. Your employer can pay SMP as a lump sum, so long as the rules for paying

NI contributions are obeyed. However if you are paid SMP in a lump sum you and your employer could pay more in NI contributions than if you are paid monthly or weekly.

## *When SMP ends*

SMP must end when your employer has paid you SMP for 18 weeks. But it can end earlier than this if you start work for a new employer after the baby is born but before the end of your maternity pay period (MPP). It is up to you to tell the employer paying you SMP about your new job. You should do this as soon as possible, and make sure you return any SMP payment you receive that covers any part of the period after you resumed work.

You must also let the employer paying you SMP know if, at any time during the MPP, you go abroad outside the European Community (see page 13) or are taken into legal custody (see page 12). In these circumstances, SMP will cease. But you may be able to claim Maternity Allowance from your Social Security office instead (see page 34).

SMP also ends if you die. It cannot be paid to your family.

SMP does **not** end if you return to work in the MPP for the employer who is paying you SMP, but you will not be paid SMP for any weeks in which you work. If there are any remaining weeks in the MPP in which you do not work, you can receive SMP for them. But the pay period is **not** extended to make up for the weeks in which you received no SMP.

## *What to do if your employer says you should not get SMP*

If your employer decides that he or she should not pay you SMP, he or she should give you a form SMP 1, stating the reasons why. Your employer must return any maternity certificate (see page 15) you have given him or her. If you think you are entitled to Maternity Allowance you should get a form MA 1 from your Social Security office, or maternity or child health clinic. Complete it and take or send it to that office with form SMP 1 and the maternity certificate.



If your employer is not liable to pay contributions under the NI scheme, you are not entitled to SMP. You should ask your employer to give the reasons for non-payment in writing. Provided you are not entitled to SMP from another employer, you should make a claim for Maternity Allowance (see page 34).

## ***Paid maternity leave***

Your employment contract may entitle you to paid maternity leave from your employer at a rate more or less than SMP. But, if you qualify for SMP, your employer cannot pay you **less** than the SMP rate you are entitled to receive.

If your employer does have an occupational maternity scheme, you will have to keep to its rules if you want to get all the maternity pay you are entitled to. Your employer can usually pay you SMP as part of your occupational maternity pay, or vice versa. But if the occupational scheme is funded entirely by the employees your employer cannot treat your maternity pay as part of SMP.

## ***Premature births***

If your baby is born prematurely, your SMP may or may not be affected, depending on just how premature the birth is.

**If your baby is born after your maternity pay period (MPP) has started**, your SMP will not be affected. Your employer should pay it to you just as if the baby had been born when it was due.

**If your baby is born before your MPP has started but after the qualifying week**, you must, if reasonably practicable, inform your employer of the birth within 3 weeks. You will then receive the SMP due to you but the pay period will now run for 18 weeks from the week after the week in which your baby was born.

**If your baby is born before or during the qualifying week**, you must, if reasonably practicable, inform your employer of the birth within 3 weeks. You will be taken as satisfying the continuous employment rule (see page 8) if

you would have done so but for your early confinement. The period over which the earnings rule (see page 7) is applied and your average weekly earnings are calculated (see page 22) will be the 8 weeks that ended with the week before the week in which your baby was born. The payment period will run from the week after the week in which your baby was born. Note, however, that if your baby is stillborn before the 25th week of your pregnancy, you won't be entitled to SMP – see **Stillbirths** below.

**If your baby is born earlier than expected and before you have given your employer notice that you intend to stop work to have a baby**, you can still get the full 18 weeks SMP. The MPP will start the week after the week in which the baby was born.

Within three weeks of the start of the MPP, you must provide written evidence that you were away from work because of your baby's birth – the baby's birth certificate will do. Your employer may agree to extend this time limit to 13 weeks (but no longer) if he or she feels you had a good reason for the delay.

You must also still provide your employer with medical evidence of the date the baby was due to be born (see page 15). Evidence of both the expected date and the actual date of birth can be provided together on part B of the maternity certificate (form MAT B1) issued by your doctor or midwife.

## *Twins or multiple births*

If you are expecting more than one baby, your entitlement to SMP is exactly the same as if you were expecting only one.

## *Stillbirths*

If your baby is stillborn earlier than the 25th week of your pregnancy (29th week if your baby is stillborn before 1 October 1992), you won't be able to get any SMP. But you may be able to get Statutory Sick Pay (see page 28). Talk to your employer.



If your baby is stillborn after the start of the 25th week of your pregnancy, you are entitled to the same SMP you would have got if your baby had been born alive.

## ***Mariners and continental shelf workers***

You won't get SMP if you are a mariner on a foreign-going vessel or deep sea fishing vessel employed by a UK employer while under a contract for which your employer pays a special low rate of NI contributions. See leaflet NI 24 *National Insurance for mariners*.

If you are a continental shelf worker or a mariner employed by a UK employer trading within the near continental limits you are covered by the SMP scheme. Moreover, if your baby is born early or you cannot be returned to the mainland when your MPP is due to start, you will be regarded as if you are in the United Kingdom.

## ***Effect of SMP on other benefits***

You cannot get Statutory Sick Pay (SSP), Sickness Benefit, Unemployment Benefit or Maternity Allowance while you are getting SMP.

It is, however, possible to go on getting Severe Disablement Allowance (SDA) and an adjusted rate of Invalidity Benefit if you were receiving this when the MPP started.

### **Statutory Sick Pay**

Most people who work for an employer and pay NI contributions get Statutory Sick Pay (SSP) from their employer. But you are not entitled to SSP if you are sick while you are getting SMP.

If you are still under a contract of service to the employer paying you SMP, you may be entitled to SSP from him or her when your SMP ends. You should inform your employers that you are sick and let them have whatever evidence they require from you. Your employers will then check if you are entitled to SSP and, if so, they will pay it.

**More information** on SSP is given in leaflet NI 244 *Statutory Sick Pay – check your rights*.

### Sickness Benefit

If you do not go back to work for your employer when your SMP ends because you are incapable of work, but you are not entitled to SSP (for example, because of your maternity absence you may not satisfy the earnings rules), your employer must issue you with an exclusion form SSP 1. Complete it and send it to your Social Security office as soon as possible if you want to claim Sickness Benefit. If your contract with your employer has ended you should claim Sickness Benefit using form SC 1.

**More information** is given in leaflet NI 16 *Sickness Benefit* available from your Social Security office.

### Invalidity Benefit

If you are receiving Invalidity Benefit when your entitlement to SMP starts, you can continue to receive it provided that you continue to supply your Social Security office with medical evidence of your incapacity. The weekly amount of Invalidity Benefit will be reduced by the weekly amount of SMP that you receive. Invalidity Benefit will again be paid in full when SMP ends and it will continue for as long as your entitlement lasts.

**More information** is given in leaflet NI 16A *Invalidity Benefit* available from your Social Security office.

### Severe Disablement Allowance

If you are incapable of work but not entitled to Sickness Benefit or Invalidity Benefit when your SMP ends, you may be able to get Severe Disablement Allowance (SDA). You should claim it on form SDA 1. Remember that continuous days of incapacity for work before or during the MPP can count towards the qualifying period for SDA. You will, however, need medical evidence of your incapacity for work. Some people need to have their disability assessed before they can get SDA. If this is so in your case, you need to have been 80 per cent disabled for at least 28 weeks in a row to qualify for SDA.



**More information** is given in leaflet NI 252 *Severe Disablement Allowance* available from your Social Security office.

### ***If your employer cannot pay***

If your employer cannot pay you SMP because he or she is bankrupt, or the firm is in liquidation, tell your Social Security office. Arrangements can then be made for you to be paid. But note that the DSS can pay you only from the week of your employer's insolvency. Any SMP you are due for earlier weeks remains the responsibility of your employer.

If your employer is not insolvent or bankrupt, but is in financial difficulties or the business is closed, he or she should still pay you SMP. Make sure you give your employer notice (see page 14) and medical evidence (see page 14) at the right times. If you have any difficulty in getting payment from your employer, you should consult your Social Security office.

### ***Unfair dismissal because of pregnancy***

If at the time of your dismissal you have been with the same employer for at least two years and you think that you have been unfairly dismissed from your job because you are pregnant, you have the right to complain to an industrial tribunal. You should consult your local Unemployment Benefit office.

**More information** is given in the Department of Employment booklet No. 4 *Employment rights for the expectant mother*, which is available from Jobcentres and Unemployment Benefit offices.

### ***If you need more money***

If you find it hard to manage on SMP and any other income you have, you might be entitled to Income Support. But you will have to claim this separately at your Social Security office.

**More information** is given in leaflet FB 4 *Cash help while you're working*.

## ***If you think your employer's decision is wrong***

If your employer does not pay you SMP when you think he or she should, or pays you less than you think you are entitled to, ask him or her for an explanation of the decision. There may be a good reason for it.

If you still disagree with your employer's decision you should ask for the reasons in writing. You can then ask for a formal decision from the Adjudication officer at your Social Security office.

The Adjudication officer is the person who makes decisions on entitlement to Social Security benefits, and he or she may do the same for questions you may have on SMP.

You cannot talk to the Adjudication officer personally, neither can your employer. But the Adjudication officer will look at anything in writing that has to do with the question that has been asked. The Adjudication officer will also ask Social Security officials to collect more evidence from you or your employer if needed.

If you find it hard to write down what you want to say, you can ask a friend or your trade union/staff association officer to help you. Or you can ask at your Social Security office for advice. If your employer has given you anything in writing to do with SMP, keep it. The Adjudication officer will want to see it.

You and your employer will both get copies of the Adjudication officer's decision.

## ***Your appeal rights***

If your employer does not appeal against an Adjudication officer's decision that he or she should pay you SMP, he or she must pay you by your next pay day, or if that is not possible, no later than the second pay day after the time for appeal has run out.

If your employer does not comply with the Adjudication officer's decision in the time shown above, you should contact your Social Security office at once.



Both you and your employer have the right to appeal to an independent Social Security Appeal Tribunal. If you decide to appeal you must write (or use the form in leaflet NI 246 *How to appeal*) to a Social Security office giving your reasons, within three months of being notified of the decision. Like the Adjudication officer the tribunal has no discretionary powers and it is bound by Social Security law. It can change the Adjudication officer's decision by increasing or decreasing the award or it can confirm that the decision is correct. It cannot however change the law or pay more than the law allows.

Although you have the right to appeal to an independent tribunal, you or your employer can ask the Adjudication officer to review his decision. The Adjudication officer can review his decision if:

- he or she made it without being aware of all the facts
- or** he or she made a mistake as to the facts
- or** he or she applied the law wrongly to your case
- or** your circumstances have changed since the decision was made.

You can ask for a review at any time by writing to your Social Security office giving your reasons. You have a right of appeal against a review decision.

For more information see NI 260 *Reviews and Appeals* which is available from your Social Security office.

## ***The right to return to work***

Payment of SMP does not depend on you intending to return to work for your employer after your baby is born. But you may have a right to return to your former job at any time within 29 weeks of your baby's birth. This is only possible if you have worked for the same employer for at least two years immediately before the beginning of the 11th week before the expected week of birth.

If you do not qualify for this right under the law, it will be up to your employer to decide whether or not you can go back to work if you wish to do so.

**More information** is given in the Department of Employment booklet PL 710 *Employment rights for the expectant mother*, available from Jobcentres and Unemployment Benefit offices.

### **Unemployed**

If you do not return to work for your employer after your SMP ends then you may be able to claim Unemployment Benefit. But remember that you can claim Unemployment Benefit only if you are capable of, available for and actively seeking work. You should consult your Unemployment Benefit office.

### ***NI credits while you are getting SMP***

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Keep a note of the period during which you received SMP. If you were not paying NI contributions during this period, credits may be awarded later to keep your NI record in order and entitle you to other benefits in later years.



# Maternity

## Allowance

### (MA)

## Introduction

**Maternity Allowance (MA)** is a benefit paid weekly by Social Security to some pregnant women who are not able to get SMP. You will get it only if you have been employed or self-employed and satisfy the National Insurance (NI) contribution rule explained below.

MA can be paid for up to 18 weeks. The current weekly rate is shown in leaflet NI 196 *Social Security benefit rates* enclosed with this guide. MA is not liable to income tax or NI contributions.

If you think you may be entitled to MA, please read the following pages very carefully. Pages 4 and 5 should help you if you forget the meanings of any of the abbreviations or technical phrases.

## Who can get Maternity Allowance?

You can get MA only if you are unable to get SMP and have been employed or self-employed and paid enough standard-rate NI contributions in the **test period**.

The test period is the period of 52 weeks ending with the 15th week before the week in which your baby is due.

**Note:** the week in which your baby is due is sometimes referred to as the EWC – expected week of confinement (see page 4).

### NI contribution rule

To qualify for MA, you must have been employed or self-employed and have paid standard rate NI contributions in respect of at least 26 weeks in the 52-week period ending with the 15th week before the week in which your baby is due. See page 5 for definition of a week.

Only standard rate employed and/or self-employed NI contributions paid by you in the test period will help you satisfy the rule. None of the following NI contributions will count:

NI contributions paid for other periods

Social Security  
Contributions and  
Benefits Act 1992  
Section 35 and  
Schedule 3, Part I,  
para 3.

- or your husband's NI contributions
- or credited contributions (see below)
- or reduced rate contributions that some married women and widows pay.

**Note:** if you have been working abroad, but remained a UK resident throughout your absence, special conditions may apply to you (see page 49).

**For example:**

Your baby is due on 17 December 1992, that is in the week beginning Sunday 13 December.

To satisfy the contribution rule, you must have paid NI contributions in respect of at least 26 weeks in the **test period**, between 8 September 1991 and 5 September 1992.

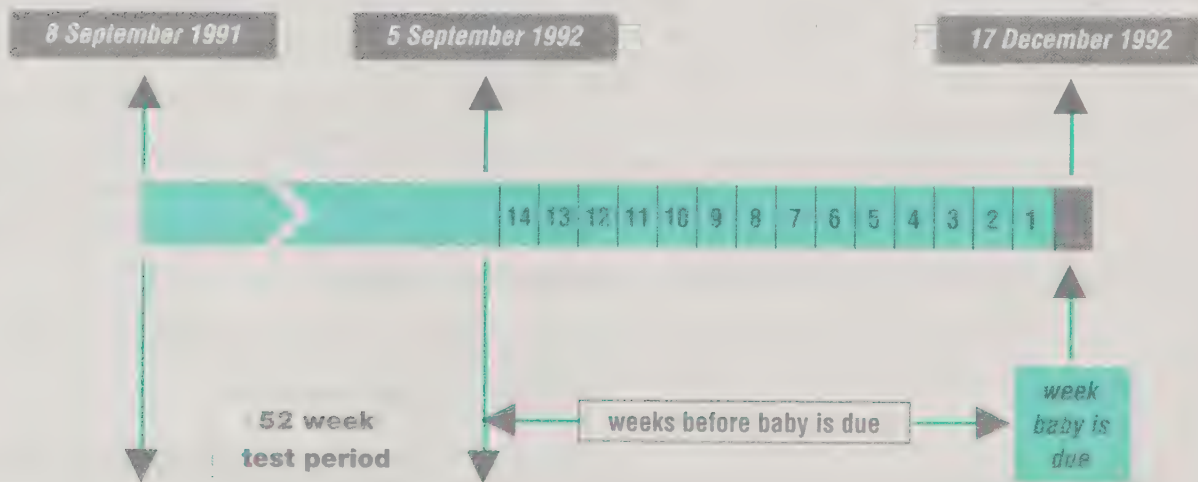


Diagram showing the test period.

**Credited contributions**

Credited NI contributions (for example for previous periods of unemployment) cannot help you to meet the MA contribution rule. However, contributions paid for weeks of holiday and/or sickness may count.

**Self-employed contributions paid by direct debit**

Where self-employed NI contributions are paid by direct debit, they are treated as having been paid on the due date, even though they are actually paid monthly in arrears.



### Self-employed contributions paid late

Self-employed NI contributions **in respect of employment during the test period** (see page 34) may be counted even if they are paid after the test period. It all depends on how late they are paid.

If they are paid before the start of the 11th week before the week in which your baby is due, they will count towards MA

If they are paid after the start of the 6th week before the week in which your baby is due, they will not count.

If they are paid **between** the start of the 11th week and the start of the 6th week before the week in which your baby is due, they will count only **if they are paid before the end of the week in which you stop work to have your baby.**

### If you lose your entitlement to Statutory Maternity Pay

If you have qualified for SMP from your employer but are taken into legal custody or are abroad outside the European Community\* at the start of your MPP, you lose your entitlement to SMP. And if you are taken into legal custody or go outside the European Community\* at any time while you are receiving SMP, your SMP will immediately stop.

**\*Note:** there is a full list of European Community member states on page 4.

In any of these circumstances, you may be able to claim MA. Your employer should give you form SMP 1, stating why your SMP has stopped, together with a maternity certificate (form MAT B1) or any other medical evidence (see page 37) that you have given him or her. You will need both forms to claim MA (see page 37).

## Who can't get MA

You may not be able to get MA (or will stop getting it if you were initially entitled to it) if:

you are getting SMP from your employer

**or** you don't satisfy the contribution rules for MA (see page 34)

- or** your baby is stillborn earlier than the 25th week of your pregnancy – see **Stillbirths**, page 45
- or** you are imprisoned or detained in legal custody
- or** you are in a country outside the European Community or one with whom the UK has no reciprocal agreement.

If you can't get MA, you may be able to get Sickness Benefit for part of your pregnancy, see page 51.

## ***How to claim MA***

You can claim MA when you reach the 14th week before the week in which your baby is due. You claim on form MA 1, which you can get from your Social Security office or from your maternity clinic or child health clinic.

Fill in the claim form carefully. The information you give on the form will be used to calculate your entitlement to MA. Your Social Security office will carry out a series of checks on the information you supply. So it is important that the details you provide are correct, or you might not receive your correct entitlement. If you are in any doubt, say so.

When you have filled in the claim form, take it or send it to your Social Security office, together with medical evidence of when the baby is due and any other information required (see below).

**Claim as soon as you can**, even if you are still at work or if you don't have the medical evidence required, or cannot provide any other information needed to complete the claim form. You can send that later.

### **Proving your baby is due**

You must provide your Social Security office with medical evidence of the date your baby is due. Ask your doctor or midwife for a maternity certificate (form MAT B1) when you reach the 14th week before the week in which your baby is due. It can't be given to you any sooner.



### Claiming if you still work for an employer

If you are working for an employer during the 15th week before your EWC, you may be able to get SMP from your employer. Your employer may need to see your maternity certificate (form MAT B1) to see if you qualify for SMP.

If you are not entitled to SMP, your employer will return your maternity certificate to you, together with an SMP exclusion form (SMP 1) on which he or she has given the reasons for not paying you SMP. Send the SMP 1 and your maternity certificate to your Social Security office with your Maternity Allowance claim form (MA 1). You should send form SMP 1 with your MA claim if your claim indicates that you were employed at any time in the 15th week before the week in which your baby is due. If you don't enclose SMP 1, your Social Security office will return your claim form and your maternity certificate to you with a note telling you to ask your employer (or employers) if you are entitled to SMP. All this could delay matters. If your MA claim was successful tell your employer.

### Claiming if you have stopped working for an employer

If you are not employed during the 15th week before your EWC, you claim MA by sending or taking your claim form (MA 1) and your maternity certificate (form MAT B1) to your Social Security office.

### Claiming if you are self-employed

If you are self-employed, claim on form MA 1, which you should take or send to your Social Security office together with your maternity certificate (form MAT B1). **If you were also employed** at any time in the 15th week before the week in which your baby is due, you must also provide a form SMP 1 with your claim to show why your employer will not pay you SMP. You should get SMP 1 from your employer.

If you pay self-employed contributions by stamping a card, you will also need to send your contribution card to your Social Security office, usually with your claim. If you can't send your card immediately, or there is any delay in obtaining your maternity certificate, don't delay in sending in your claim form MA 1. The rest can be sent later.

### Claiming extra benefit for a dependant

If you want to claim benefit for an adult dependant, tick the appropriate box in part 5 of form MA 1 and you will be sent a claim form. Do not delay claiming as you may lose the extra money for any period earlier than six months before you claim it.

### Claiming before you stop working

If you decide to work later into your pregnancy, your Social Security office will send you a form (BM 25A) notifying you of your entitlement and asking you to let them know the date when you cease work to have your baby so that payments can start. You should also remember to tell your employer.

### Claiming too early

If you send in your claim too early, your Social Security office will return it to you with any relevant information, and ask you to send it in later.

### Claiming after the baby is born

If you have delayed your claim until after the birth ask the doctor or midwife to give you a certificate, saying on it the date on which the baby had been expected.

**Note:** unless you have a good reason for not claiming before the baby is born, you may lose benefit (see page 43).

## *When Maternity Allowance is paid*

The earliest MA can be paid is the start of the 11th week before the week the baby is due. But there may be some flexibility as to exactly when the payments start, depending on when you stop work to have the baby.

### The Maternity Allowance period

MA can be paid for a period of up to 18 weeks. This is called the **Maternity Allowance period** or MAP. Unless your baby is born prematurely, the MAP must always include a core period of 13 weeks, beginning 6 weeks before your baby is due.



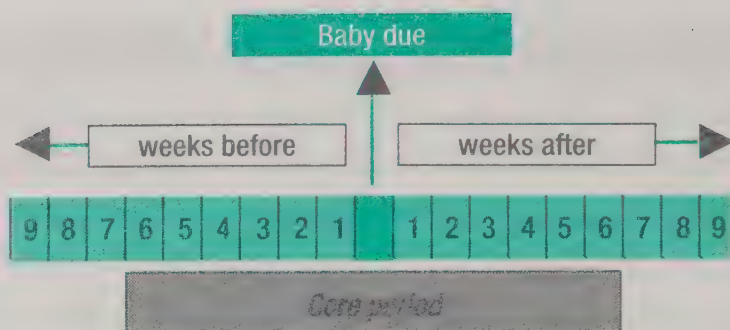


Diagram showing the core period.

The remaining five weeks may be taken before or after (or some before and some after) the core period. It all depends on when you stop work to have your baby.

### Working out your Maternity Allowance period

Unless your baby is born prematurely the earliest your MAP can start is five weeks before the core period. This means 11 weeks before the week your baby is due.

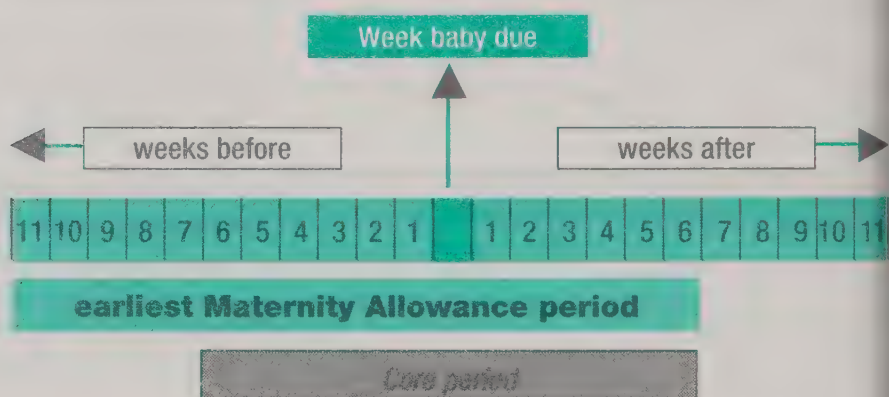


Diagram showing earliest Maternity Allowance period.

Your MAP will start at the earliest date if, at the start of the 11th week before the week in which your baby is due, any one of the following applies to you:

- you have already given up work as an employee or self-employed person
- or you are claiming Unemployment Benefit (this will stop when MA starts)
- or you are no longer employed or self-employed but are claiming Sickness Benefit, Invalidity Benefit or Severe Disablement Allowance.

(Exceptionally, if your baby is born prematurely more than 11 weeks before it was due, your MAP will start earlier. See **Premature births** on page 45.)

But if, at the start of the 11th week before your baby is due any one of the following applies:

- you are still working as an employed or a self-employed person,
- or you are getting Statutory Sick Pay (SSP) from your employer,
- or you have not yet given up your job but are claiming Sickness Benefit, Invalidity Benefit or Severe Disablement Allowance

your MAP will start later. It will usually start from the Sunday following the week in which you stop work because of your pregnancy.

The latest your Maternity Allowance period can start is the beginning of the core period. If you carry on working after that you will lose benefit (see below).

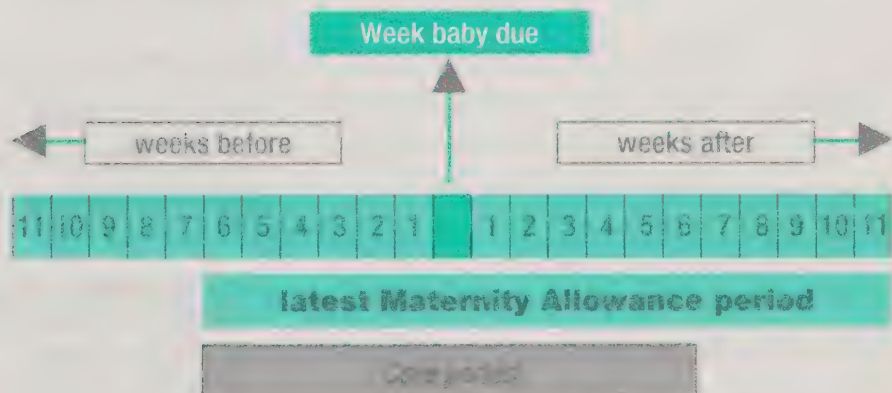


Diagram showing latest Maternity Allowance period.

### Working in the core period

The MAP can never start any later than the beginning of the core period. This means the beginning of the 6th week before the week your baby is due. But you cannot get MA while you are still working. So if you carry on working into the core period, you won't be paid MA for the full 18-week period.

For example, if you stop work only two weeks before your baby is due, you will lose four weeks MA.



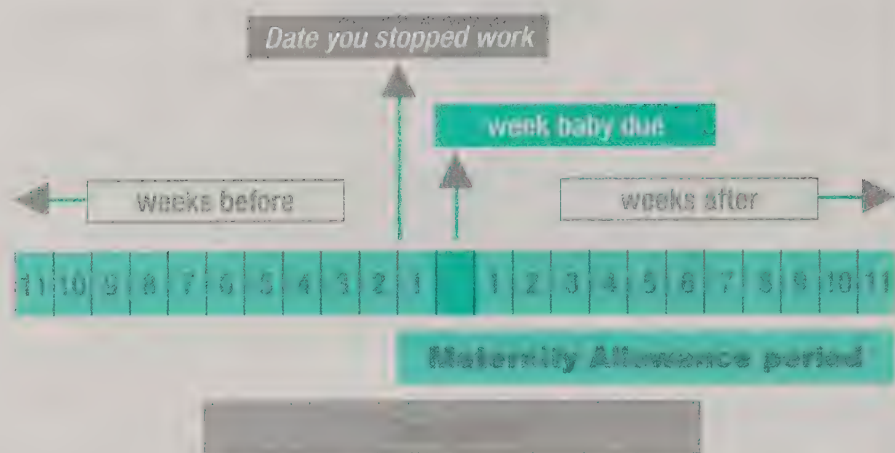


Diagram showing an example of a shorter Maternity Allowance period.

**Note:** if you work into the core period, MA will be paid from the day after you stop work. So, if you stop work on a Thursday, you can get MA from the Friday of that week. You will not have to wait until the beginning of the next week.

Remember that your MAP is based on the date when the baby is due, and cannot be extended beyond the 11th week after that date – no matter how late the baby is actually born (see below).

### Stopping work early

You can, of course, stop work long before your baby is due. As long as you satisfy the NI contributions rule for the relevant 52 weeks, you should be able to get MA. But note that stopping work earlier may affect your right to return to work afterwards (see page 44). Your MAP will start from the 11th week before your baby is due.

### Baby born late

If your baby is born later than the week in which it was due, your MAP will not change. It will remain based on the date the baby was originally due. However, if you are incapable of work when the payment period ends, you may be able to get Sickness Benefit (see page 47).

Social Security  
Contributions and  
Benefits Act 1992  
Section 35

The Social Security  
(Maternity  
Allowance)  
Regulations 1987  
(SI 1987 No 416)

The Social Security  
(Claims and  
Payments)  
Regulations 1987  
(SI 1987 No 1968)

### Claiming MA

If you delay your claim for MA until after the baby is born, you may lose some of your benefit unless you had a good reason for the delay. How much MA you get will depend on:

the MAP you would have had if you had claimed before the baby was born

**and** whether or not your baby was born more than 12 weeks early (if it was, see **Premature births** on page 45).

As long as your baby wasn't more than 12 weeks early, your MAP depends on whether or not you were employed (or self-employed) at the beginning of the 11th week before the week the baby was due. You don't need to have actually been at work at that time. For example, you are counted as employed if you are off work but receiving Statutory Sick Pay from your employer.

**If you were employed (or self-employed) at the beginning of that 11th week**, the MAP runs from the week following the week the baby was born to, either the 18th week after you gave up work, or the end of the 11th week after the baby was actually due – whichever is the earlier.

**If you weren't employed at the beginning of the 11th week before the baby was due**, the MAP runs from the beginning of the week following the birth to the end of the 6th week after the baby was due.

**In no circumstances can MA be paid for more than 18 weeks.**

If you do not claim within 12 months of the baby's birth, you may lose benefit altogether.

**Note:** if you have not claimed until after the birth ask your doctor or midwife to give you a maternity certificate (form MAT B1) giving the date on which the baby had been expected.

### How MA is paid

If you qualify for MA, you will normally get a book of weekly orders that you can cash at a post office. If you are



entitled to extra money for an adult dependant (see page 45), this will be included.

### Cashing the allowance

The book of orders can be cashed each Friday at the post office named in the book. Each order must be cashed within three months of its Friday pay day. If you are unable to do this, let your Social Security office know. You will normally lose your allowance altogether if you delay cashing an order for 12 months or more.

You should read the notes in your order book before cashing the orders.

Remember that the orders must not be cashed if any of the following applies:

- your pregnancy ends earlier than the 29th week of pregnancy (unless a living child is born), and this occurs before 1 October 1992
- or** during the period of the allowance you do any work (see below)
- or** during the period of the allowance you start receiving SMP
- or** you leave the UK (England, Scotland, Wales, Northern Ireland and the Isle of Man).

In any of these cases your order book must be returned to your Social Security office, with a note explaining why.

The book must also be returned if you are imprisoned or detained in legal custody.

### Returning to work

If you return to work during your MAP, you must not cash any further orders, even if you are working only for a few days. You must return your order book to your Social Security office with a note of explanation. If you are returning to work only for a few odd days a week, the Adjudication officer will decide whether any further payments can be made.

## ***Premature births***

If your baby is born prematurely, your MAP may or may not be affected, depending on how premature the birth is.

If your baby is born prematurely after your MAP has started, nothing will change. The MAP will remain based on the date the baby was due.

If your baby is born before your MAP was due to start, your MAP will start from the week following the week in which the baby was born. If you have already got your order book, it might need altering. Check with your Social Security office.

## ***Twins or multiple births***

If you are expecting more than one baby, your entitlement to MA is exactly the same as if you were expecting only one.

## ***Stillbirths***

If your baby is stillborn earlier than the 25th week of your pregnancy (29th week if your baby is stillborn before 1 October 1992), you won't be able to get MA. But you may be able to get Sickness Benefit. Consult your Social Security office.

If your baby is stillborn after the start of the 25th week of your pregnancy, you are entitled to the same MA you would have got if your baby had been born alive.

## ***Extra benefit for your dependants***

An increase of your MA may be paid for one adult dependant.

The current amount payable is shown in leaflet NI 196 *Social Security benefit rates* enclosed with this guide.

If the adult dependant is your husband you may get an increase if both of the following apply:



his earnings or occupational pension are no more than the increase normally payable for a dependant

**and** he normally lives with you, or you are contributing to his maintenance a sum that is at least as much as the amount of the increase you would get.

If the adult dependant is a person looking after children, you may get an increase if all of the following apply:

you are entitled (or can be treated as entitled) to Child Benefit for the children

**and** he normally lives with you, or you are contributing to his maintenance a sum that is at least as much as the amount of the increase you would get

**and** you do not get an increase for your husband.

You cannot get an increase for an adult dependant who has stopped work or lost his or her job because of involvement in a trade dispute.

If you wish to claim an increase, you should tick the appropriate box in part 5 of your MA claim form MA 1. Or ask at your Social Security office.

### **Effect of other benefits**

An increase for a dependant may be reduced or not paid at all if you or anyone else is getting a payment for the same dependant under the War Pensions, National Insurance, Industrial Injuries, or training allowances schemes. This includes an allowance under any Youth Training Scheme.

This also applies if a partner or other adult dependant is receiving payment in his or her own right under any such scheme, including the Job Release or Enterprise Allowance Scheme. (But it will not apply if the payment is a War Pension or Industrial Injuries Disablement Benefit.)

### ***How other benefits affect MA***

Your MA may be reduced, or not paid at all, if you get another Social Security benefit or a training allowance (including an allowance under the Youth Training Scheme).

### *Effect of MA on other benefits*

While you are receiving MA you will not be entitled to Statutory Sick Pay and some Social Security benefits, such as Sickness Benefit or Unemployment Benefit. You may still be entitled to benefits such as Income Support, but the amount you get will be reduced.

#### **Statutory Sick Pay**

Most people who work for an employer and pay Class 1 NI contributions can get Statutory Sick Pay (SSP) from their employer. But you are not entitled to SSP if you are sick during the period you have chosen to receive MA.

If you are still employed at the start of the 11th week before the week in which the baby is due and are sick for four days or more, you may be able to get SSP for periods of sickness up to the day before MA is due to start. But you cannot get SSP once you have reached the 6th week before the week the baby is due.

If you go back to work for an employer after your baby is born, you will not be entitled to SSP for any sick absences starting within 57 days of your last day of entitlement to MA. Your employer must give you form SSP 1 so that you can claim Sickness Benefit instead.

**More information** is given in leaflet NI 244 *Statutory Sick Pay – check your rights* available from your Social Security office.

#### **Sickness Benefit and Invalidity Benefit**

If you do not go back to work for an employer when your MA ends, you may claim Sickness Benefit if you are incapable of work. After getting MA and/or Sickness Benefit for 168 days (or in some cases less) you can get Invalidity Benefit.

If you are entitled to more than one benefit at the same time (for example, MA and Invalidity Benefit) you will normally get an amount equal to the greater.



**More information** on Sickness Benefit and Invalidity Benefit is given in leaflets NI 16 *Sickness Benefit* and NI 16A *Invalidity Benefit* available from your Social Security office.

### **Unemployment Benefit**

If you are getting Unemployment Benefit, tell the office paying it about your MA claim, because you cannot get Unemployment Benefit as well as MA.

If you are receiving Unemployment Benefit and qualify for MA, your MAP automatically starts at the beginning of the 11th week before the week in which the baby is due. That is when your Unemployment Benefit will stop.

Exceptionally, if you stop work between the beginning of the 11th week and the end of the 7th week before the week your baby is due, you may be able to get some Unemployment Benefit. This may be paid for any days in that week between the last day of work and the commencement of payment of MA the following week.

### **Enterprise Allowance**

If you are getting an Enterprise Allowance, tell the office paying it about your MA, because you may not be able to get the Enterprise Allowance as well.

### **Income Support**

Income Support paid to you or to your partner will be reduced by the amount of MA, including any increase of your allowance you receive for dependants (see page 45). So you must tell your Social Security office when you make a claim for MA.

## ***NI credits while you are getting MA***

You will normally be entitled to NI contribution credits for each complete week in which you receive MA to maintain your NI record and assist you in any future claim to other benefits.

## ***If you are or have been abroad***

There are reciprocal agreements affecting maternity benefits between the UK including the Isle of Man and the following countries: Austria, Barbados, Cyprus, Finland, Guernsey, Israel, Jersey, Norway, Sweden, Turkey and Yugoslavia. There are also arrangements under the European Community Regulations on Social Security with other member countries (listed on page 4).

The reciprocal agreements and EC legislation may in certain circumstances help you to qualify for UK Maternity Allowance. In the event that you have entitlement to MA from more than one country, then generally conditions provide that only benefit from one country is payable.

If you go to any other country during the MAP, there are special rules for payment of UK Maternity Allowance abroad.

If you intend to go abroad after you have claimed MA you must tell the office where you claimed as soon as possible the date when you will leave the UK and what your address abroad will be.

For more details of the arrangements and other information ask your Social Security office for leaflet NI 38 *Social Security abroad* and in addition if the country covered is a member state of the EC also leaflet SA 29 *Your Social Security, health care and pension rights in the European Community*. The above leaflets and any further advice can also be obtained by writing to:

Benefits Agency  
Overseas Branch  
DSS Longbenton  
Newcastle upon Tyne  
NE98 1YX

## ***Appeals***

If you disagree with the Adjudication officer's decision, you have the right to appeal to an independent Social Security Appeal Tribunal. If you decide to appeal you must write (or use the form in the leaflet NI 246 *How to appeal*)

to a Social Security office giving your reasons, within three months of being notified of the decision. Like the Adjudication officer the tribunal has no discretionary powers and it is bound by Social Security law. It can change the Adjudication officer's decision by increasing or decreasing the award or it can confirm that the decision is correct. It cannot, however, change the law or pay more than the law allows.

Although you have the right to appeal to an independent tribunal, you can ask the Adjudication officer to review his or her decision. The Adjudication office can review his or her decision if:

- he or she made it without being aware of all the facts
- or he or she made a mistake as to the facts
- or he or she applied the law wrongly to your case
- or your circumstances have changed since the decision was made.

You can ask for a review at any time by writing to your Social Security office giving your reasons. You have a right of appeal against a review decision.

When the Adjudication officer makes a decision in MA cases, he or she has to take into account, amongst other things, whether you have paid enough NI contributions to qualify. This information is obtained from the Department's records. Any dispute about your contribution record must be settled by the Secretary of State, who is responsible for these records. If you disagree with the Adjudication officer's decision solely because you think that either your contribution record is not correct, or you have paid sufficient NI contributions to qualify for benefit, you should write to the office that issued you with the Adjudication officer's decision, giving your reasons.

If you disagree with the Adjudication officer's decision for other reasons you can appeal to a Social Security Appeal Tribunal or you can ask the Adjudication officer to review his or her decision.

For more information see NI 260 *Reviews and Appeals* which is available from your Social Security office.



**If you can't**

**get SMP**

**or MA**

## ***Sickness Benefit***

If you can't get either SMP from your employer or MA from Social Security, you may be able to get Sickness Benefit. Your maternity certificate (form MAT B1) is accepted as evidence of incapacity for work for the period starting six weeks before the week the baby is due to 14 days after the date on which the baby is born.

If you claim MA, your claim will automatically be considered for Sickness Benefit if you do not qualify for MA. You do not need to make a separate claim. This is true even if your MA claim is delayed until up to one month after your baby is born. But if you do delay your claim to MA until after your baby is born, you will only be considered for Sickness Benefit from the actual date of confinement.

The contribution conditions for Sickness Benefit are shown in leaflet NI 16 *Sickness Benefit* available from Social Security offices.

## ***Unemployment Benefit***

If your MA claim is disallowed, you may be able to continue to claim Unemployment Benefit after the beginning of the 11th week before the week in which your baby is due. But remember you can claim Unemployment Benefit only if you are both available for, and capable of, work. You should consult your Unemployment Benefit office.

## ***NI credits***

If you do not qualify for SMP or MA, you may still be entitled to some NI contribution credits for six weeks before the week your baby is due until one or two weeks after the date your baby is born. But you will not be entitled to NI credits if you usually pay the reduced rate NI contributions that some married women and widows pay. You must send your maternity certificate (MAT B1) to your Social Security office and you must not work during that time. These credits will maintain your NI record and assist you in any future claims to other benefits.

## Further

## information

### ***Rates of benefits***

Rates of benefits are published each year in Social Security (Uprating) Regulations which are approved by Parliament usually in October or November each year. Benefits are usually uprated from April, at the beginning of the financial year.

Details of the current rates of all Social Security benefits, including maternity benefits, are available in leaflet NI 196 *Social Security benefit rates*, a copy of which is enclosed with this booklet.

### ***Other Social Security leaflets***

#### **Where to get them**

All Social Security leaflets are available free of charge from your Social Security office. You can find the address in the phone book, listed under SOCIAL SECURITY or BENEFITS AGENCY. Some leaflets are also available in post offices.

If you are unable to pick up leaflets locally, or if you need large numbers of any of them, write, with details of the quantity you want, leaflet titles and reference numbers, to this address:

Leaflets Unit  
PO Box 21  
Stanmore  
Middlesex HA7 1AY.

Social Security leaflets are designed in a number of different styles to make it as easy as possible for you to find the information you want. Some of these leaflets are described below.

#### **Overview leaflets**

Two general leaflets provide basic information about Social Security and the benefits you can claim. Leaflet FB 2 *Which benefit?* gives a general overview of all benefits. Leaflet NI 196 *Social Security benefit rates* gives the details of the current rates of benefits.

### General information leaflets

There is a series of leaflets which give information on the range of benefits that different groups of people can claim. All of these leaflets are available in Social Security offices, and some are also available in post offices.

- FB 4 *Cash help while you're working*
- FB 6 *Retiring?*
- FB 8 *Babies and benefits*
- FB 9 *Unemployed?*
- FB 16 *Sick or disabled through service in the Armed Forces?*
- FB 23 *Young people's guide to Social Security*
- FB 26 *Voluntary and part-time workers*
- FB 27 *Bringing up children?*
- FB 28 *Sick or disabled?*
- FB 29 *Help when someone dies*
- FB 30 *Self-employed?*

### Detailed information leaflets

Technical guide leaflets, such as this one, give detailed information on particular benefits or benefit areas. They are intended for both professional and voluntary advisers as well as for members of the public who want to know more about, in this case, the maternity benefits scheme. Others include:

- SB 20 *A guide to Income Support*
- SB 16 *A guide to the Social Fund*
- NI 261 *A guide to Family Credit*
- RR 2 *A guide to Housing Benefit*
- NP 45 *A guide to widows' benefits*
- NI 260 *A guide to Reviews and Appeals*
- D 49 *What to do after a death*
- HB 5 *A guide to non-contributory benefits for disabled people*

## Freeline Social Security

To get more information about Social Security benefits and National Insurance, there is a free telephone enquiry service – **Freeline Social Security**.

Just dial **0800 666 555**. You will not be charged for the call. The person taking your call will not have access to your papers, but will be able to give you general advice.



## ***Acts, Regulations and detailed information***

This leaflet is only a guide to maternity benefits. It has no status in law. For more detailed information on maternity benefits, including the full legal documents passed by Parliament you may want to consult some of the following publications.

The detailed rules of the maternity benefits, including benefit rates and entitlement, are contained in Regulations made by the Secretary of State and approved by Parliament. You can buy copies of the Acts and all the Regulations through bookshops or direct from the publishers – Her Majesty's Stationery Office (HMSO). Many libraries will also hold copies for you to consult.

### **Acts and Regulations**

This leaflet refers you to the Act and Regulations which cover the SMP and MA rules. The Regulations may be changed or added to from time to time by Amendment Regulations. Also, each year a set of Up-rating Regulations is published which change the benefit rates. The Act and main regulations which govern maternity benefits are currently:

- 1) Social Security Contributions and Benefits Act 1992 (Chapter 4)
- 2) The Statutory Maternity Pay (General) Regulations 1986 (SI 1986 No 1960)
- 3) The Statutory Maternity Pay (Medical Evidence) Regulations 1987 (SI 1987 No 235)
- 4) The Statutory Maternity Pay (Persons Abroad and Mariners) Regulations 1987 (SI 1987 No 418)
- 5) The Statutory Maternity Pay (Compensation of Employers) Regulations 1987 (SI 1987 No 91)
- 6) The Statutory Maternity Pay (National Health Service Employees) Regulations 1991 (SI 1991 No 590)

- 7) The Social Security (Maternity Allowance) Regulations 1987 (SI 1987 No 416)
- 8) The Social Security (Medical Evidence) Regulations 1976 (SI 1976 No 615)
- (9) The Social Security (Claims and Payments) Regulations 1987 (SI 1987 No 1968)

**The blue volumes**

HMSO also publishes a series of loose-leaf books known as the 'blue volumes'. These volumes contain all the Acts and Regulations and keeps them indexed and up to date by regular supplements. You can consult a copy at your Social Security office. Many libraries also have a copy. Copies can also be bought direct from HMSO.

**The Adjudication Officers' Guide and the Social Security Commissioners**

**The Adjudication Officers' Guide**

The Adjudication Officers' Guide (AOG) gives guidance to Adjudication officers on the interpretation of the law for all benefits. The AOG is written by Central Adjudication Services and aims to ensure consistency in decision-making throughout the country. You can consult a copy of the AOG at your Social Security office or you can buy a copy from HMSO.

**The Social Security Commissioners**

The role of the Social Security Commissioners is to decide appeals on a point of law from decisions of Social Security Appeals Tribunals. Reported decisions of the Commissioners deal with matters of important legal principles and must be followed by Adjudication officers and Social Security Appeals Tribunals. They are published individually by HMSO and are periodically gathered together and published as *Reported decisions of the Social Security Commissioner*, also by HMSO.

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